

## APPEAL NO. 010321

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 31, 2001, a contested case hearing (CCH) was held. The hearing officer determined that: (1) the appellant's (claimant) depression was not causally related to his compensable injury of \_\_\_\_\_; (2) the claimant is not entitled to supplemental income benefits (SIBs) for the sixth compensable quarter; and (3) the claimant is not entitled to SIBs for the seventh compensable quarter.

The claimant appealed all of the hearing officer's determinations. The carrier responded, urging the Appeals Panel to affirm the hearing officer's decision.

### DECISION

Reversed and rendered on extent of injury, affirmed as to SIBs.

#### **Extent of Injury**

The claimant sustained a lumbar injury on \_\_\_\_\_, while employed by employer, for whom he had worked since 1990. The claimant had surgery on July 28, 1997; although some of his leg pain was relieved his back pain was not and became progressively worse after surgery. The claimant testified that when he did not get better and his surgeon told him that he would never be the way he was before, he felt overwhelmed and made a suicide attempt. His surgeon, Dr. L, requested a psychiatric referral in a report issued in October 1997 for the claimant's depression. Dr. L stated that the depression was the result of the injury and subsequent need for surgery. A required medical examination (RME) doctor, Dr. T, concurred with the need for the claimant to see a psychiatrist to help him with the depression that arose as a means of coping with his injury. This record and other records note that the claimant's depression resulted from his pain, as well as his fear that he could never return to his prior occupation. There is also a reference in one note from Dr. L that the claimant had no resources to pay for psychiatric care.

The claimant had a functional capacity evaluation performed in October 2000, which stated that, physically, he could perform at the sedentary level. However, the claimant had been evaluated in a second RME on September 19, 2000, by Dr. G, who stated that, at that point, the claimant's physical condition was better than his psychiatric condition. Dr. G said that he believed that the claimant could not handle even very sedentary work due to this.

The only record procured from the doctor identified as the treating psychiatrist (Dr. K) was a brief July 16, 1999, letter stating that he had cared for the claimant for two years; that depression, inability to concentrate, and easy anger made the claimant unable to function socially; and that the claimant could not undergo rehabilitation due to his mental

condition. Dr. K was contacted by the ombudsman slightly less than one month before the CCH, and was asked to answer some questions and supply records, but apparently did not do so.

However, the claimant apparently also underwent a "physician to physician review" on June 29, 1999, by Dr. GD, identified as a psychiatrist. The report indicates that this meant that Dr. GD talked the case over with Dr. K, and that the immediate topic was a need for Viagra. Dr. GD noted that the depression had caused impaired sexual function. Dr. GD pointed to strong objective evidence of a back injury, which included right-sided ruptured and extruded fragments at L4-5. Dr. GD stated that the claimant had a legitimate injury "and his depression is clearly precipitated by that injury and subsequent impairment of functioning." Dr. GD concurred in the recommendation of Dr. K for Viagra.

We note that there was no indication that the injury was disputed by the carrier; surgery is referred to as having been performed after the second opinion process. The claimant said that he had never undergone any treatment for a psychological condition prior to his injury and back surgery.

The hearing officer erred in determining that the claimant's depression is not causally related to the compensable injury sustained on \_\_\_\_\_. We note that the hearing officer made the following Finding of Fact No. 5:

Claimant has sustained situational depression as a result of his reduced physical capacity and reduced earning capacity which are due to the compensable injury . . . .

The hearing officer also found, however, that the claimant's depression was traceable to circumstances arising out of the injury and not to the injury itself.

However, we have observed that courts have held the law "well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefore, causes other injuries which render the employee incapable of work." McAdams v. Fidelity and Casualty Company of New York, 406 S.W.2d 518 (Tex. Civ. App.-Houston 1966, writ ref'd n.r.e.). As the Texas Supreme Court said in Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975), "[t]he site of the trauma and its immediate effects are not, however, necessarily determinative of the nature and extent of the compensable injury. The full consequences of the original injury, together with the effects of its treatment, upon the general health and body of the workman are to be considered." *Id.* at 526. In short, in the present case, an injury arising from the claimant's back surgery would be considered as part of the \_\_\_\_\_, injury. As the hearing officer herself found, the depression was due to the claimant's "reduced physical capacity" as well as any concerns he had about reduced earning capacity. Section 401.011(26) defines injury as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The term includes an occupational disease."

Although the hearing officer cites the case of Texas Employers Insurance Association v. Wilson, 522 S.W.2d 192 (Tex. 1975) as the basis for rejecting the claimant's contention, she has, in fact, made a finding of causal relationship that the Wilson court said was required to support a determination that depression is part of an injury. We would note that the applicability of Wilson must be read in the context of that case, which had to do with whether a specific injury could be expanded into a general injury, a concept viable under "old" law but no longer extant in the 1989 Act. The Supreme Court also was explaining why two jury findings, one of which was that there was no causal connection between the injury and subsequent depression, were not irreconcilable. Finally, there was also no evidence in the Wilson case that the plaintiff in that case had experienced depression due to failed surgery for his compensable injury.

More to the point would be an Appeals Panel decision that reversed and remanded a "no causal connection" decision on depression. The Appeals Panel observed in Texas Workers' Compensation Commission Appeal No. 961449, decided September 9, 1996, that the fact that there may be more than one cause of the claimant's psychological condition does not preclude a finding of compensability, provided that there is a causal connection between the compensable injury and the claimant's psychological problems. *Compare* Texas Workers' Compensation Commission Appeal No. 950749 decided June 21, 1995, (protracted dispute resolution process does not make resultant stress part of the compensable injury). The causal connection here is met by the fact that surgery for the back injury (as well as the injury itself) resulted in the impaired physical condition that the hearing officer expressly found to be a cause of the claimant's depression. We would note that the hearing officer's description of this as "situational" depression is nowhere supported by the medical evidence in this case.

### **Supplemental Income Benefits**

The hearing officer did not err in determining that the claimant is not entitled to sixth and seventh quarter SIBs. Separate and apart from the determination of extent of injury to depression (which we have reversed here), the hearing officer noted that the records contained in evidence were not sufficiently detailed to show why the claimant had the complete inability to do any work. Dr. K may well supply such evidence in answer to the ombudsman's questions, but it was not produced for this CCH. The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, given the rules that apply to this case, most notably Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)).

For the reasons stated above, the decision and order of the hearing officer are affirmed as to the SIBs quarters in issue but reversed, and a new decision rendered, that the claimant's depression is part of his compensable injury. The carrier is ordered to pay applicable medical benefits for treatment of the depression.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge